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## Juvenile Court Case Compendium

**Case summaries of selected North Dakota Supreme Court opinions  
concerning adoptions, juveniles, deprivation, delinquency, and the  
termination of parental rights  
1971-2010**

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This compendium consists of an index and case summaries of significant cases involving the juvenile court decided by the North Dakota Supreme Court. It is designed to aid in researching cases involving the Juvenile Court by providing a quick reference to relevant cases. The reader is warned to always consult the actual case before citing it in any document submitted to the court.

The index references only the most significant issues included in the cases, not every issue addressed by either the trial or appellate court. For example, although there were allegations of sexual abuse in [In the Interest of L.F.](#), 1998 ND 129, 580 N.W.2d 573, that issue was not a primary factor supporting termination in that case, so it is not included under the "Sexual Abuse of Children" heading in the index. Similarly, although the North Dakota Supreme Court addressed the standard of review in that case, it was not discussed at length, and is therefore not included under the heading "Standard of Review."

However, if the circumstances are not usually seen on appeal, such as cases involving deprivation without termination, those cases will be included in the corresponding heading in the index, despite the fact that the Supreme Court did not discuss the issue at length in the opinion. See e.g., [In the Interest of F.N.D.](#), 554 N.W.2d 456 (N.D. 1996)

## **Index**

[Abandonment](#)  
[Abuse/ Neglect](#)  
[Adoption - procedure](#)  
[Alcoholism and Mental Illness - Dual Diagnosis \(parent\)](#)  
[Alcoholism/ drug addiction \(parent\)](#)  
[Appeals](#)  
[Child Support](#)  
[Cleanliness of home](#)  
[Collateral Attack](#)  
[Conditional Consent to Termination](#)  
[Conditions Causing Deprivation Remedied/ Removed](#)  
[Constitutional issues](#)  
[Counsel Issues](#)  
[Deprivation without Termination](#)  
[Deprivation - Insufficient Evidence](#)  
[Developmentally Disabled Parent](#)  
[Domestic Violence](#)  
[Evidence Issues](#)  
[Frustrate visitation](#)  
[Grandparents/ Psychological parents](#)  
[Indian Child Welfare Act \(ICWA\)](#)  
[Incarcerated Parent](#)  
[Juvenile Delinquency/ Unruliness](#)  
[Juvenile Parents](#)  
[Juvenile Court issues](#)  
[Mental/ Psychological/ Behavioral Condition \(Parent\)](#)  
[Murder of Spouse/ Parent](#)  
[Parental Alienation](#)  
[Paternity](#)  
[Permanent Foster Placement](#)  
[Sexual Abuse of Children](#)  
[Shaken Baby Syndrome](#)  
[Special Needs Child](#)  
[Standard of Review](#)  
[Step-Parent Adoption](#)  
[Transfer from Juvenile Court to District Court](#)  
[Voluntary Temporary Placement](#)

## **Abandonment**

[Matter of J.D.F.](#), 2010 ND 160, 787 N.W.2d 738

When petition for termination of parental rights is solely based on a claim of abandonment, evidence of physical or verbal abuse against the party seeking termination by the party against whom termination is sought is not relevant.

[Matter of A.M.W.](#), 2010 ND 154, 786 N.W.2d 727

The record supported the district court's findings that the evidence was not clear and convincing the natural father intended to abandon the child. The Court was not left with a definite and firm conviction that a mistake was made and the district court's findings were not clearly erroneous.

[S.H.B. v. T.A.H.](#), 2010 ND 149, 786 N.W.2d 706

Intent to abandon the child must be shown and may be inferred from a parent's conduct. A parent's incarceration alone is not a defense to abandonment. Abandonment may rest upon incarceration combined with other factors such as parental neglect, absence of contact, failure to support, and disregard for the child's general welfare.

[Adoption of H.G.C.](#), 2009 ND 19, 761 N.W.2d 565

The right to withhold consent to an adoption may be terminated if the parent abandoned the child. A court must consider contact and communication with the child, love, care and affection toward the child, acceptance of parental obligations, negligent failure to perform parental duties, and intent in deciding whether the parent has abandoned the child.

[B.L.L. v. W.D.C.](#), 2008 ND 107, 750 N.W.2d 466

The best interests test is not used when terminating a parent's rights due to abandonment under N.D.C.C. § 27-20-44. The best interests test is primarily used in custody proceedings and involves weighing two suitable alternatives for raising the child. In a termination proceeding under N.D.C.C. § 27-20-44, the court determines whether the parent may retain parental rights, regardless of any competing alternatives.

[Adoption of H.R.W.](#), 2004 ND 216, 689 N.W.2d 403

Natural father abandoned child (age 5) by failing to communicate with child or pay child support

[Adoption of S.R.F.](#), 2004 N.D. 150, 683 N.W.2d 913

Mother's failure to exercise visitation or provide financial support for special needs child (age 3) voluntarily placed with family friends caused child to be abandoned

[Interest of C.R.C.](#), 2001 ND 83, 625 N.W.2d 533

Evidence of mother's poor lifestyle choices and behavioral problems; her history of non-cooperation with social services programs; and her failure to maintain minimal contact with her child while the child (age 6) was in foster care supported termination of her parental rights

[Adoption of J.M.H.](#), 1997 ND 99, 564 N.W.2d 623

Incarcerated biological father abandoned child (age 8). The procedures for terminating the inmate's parental rights did not deprive him of due process and his conclusory allegations were insufficient to show ineffective assistance of counsel.

[In the Interest of C.R.M.](#), 552 N.W.2d 324 (N.D. 1996)

A probable cause finding upon a juvenile detention hearing is designed to afford a child treatment or rehabilitation. A probable cause finding in a transfer hearing has a very different purpose, and is an additional opportunity for a juvenile to show, with the assistance of counsel, that probable cause does not exist. When petition for termination of parental rights is solely based on a claim of abandonment, evidence of physical or verbal abuse against the party seeking termination by the party against whom termination is sought is not relevant.

[Adoption of J.W.M.](#), 532 N.W.2d 372 (N.D. 1995)

Incarcerated father who had intermittent past conduct with child (age 6) and who was allowed to give testimony via recorded deposition at termination hearing did not have his constitutional rights violated by procedure used at trial. Dissent argued that termination was improper because child was not abandoned. Natural father's failure to pay child support warranted a court order, not termination.

[Adoption of A.M.M.](#), 529 N.W.2d 864 (N.D. 1995)

Father, who resided in California, abandoned his child (age 6) after mother moved from California to North Dakota was affirmed. Although relationship between father and child was close when child lived in California, attempts to contact the child were virtually eliminated when child resided in North Dakota.

[Adoption of A.M.B.](#), 514 N.W.2d 670 (N.D. 1994)

Natural mother's actions in frustrating father's attempted visitation of 2-year-old did not rebut the evidence that he had abandoned the child when the father paid no child support, only attempted to visit the child twice, and did not attempt to negotiate visitation when offered by the mother.

[Interest of R.M.B.](#), 402 N.W.2d 912 (N.D. 1987)

Although there was evidence that teen-aged mother voluntarily placed the child (age 6) with social services and remained in contact with social services and the child by telephoning and providing some monetary support while she attended vocational training out of state, other prognostic and testimonial evidence indicating that she was not committed to the parent-child relationship, including voluntary termination petition that was withdrawn at the hearing, supported the finding of abandonment and deprivation.

[Pritchett v. Exec Dir of Social Services Brd.](#), 325 N.W.2d 217 (N.D. 1982)

Termination of Parental Rights and step-parent adoption of child (age 5). The proper standard of review for termination of parental rights proceedings under the Uniform Juvenile Court Act or the Revised Uniform Adoption Act is similar to a trial de novo. The proper evidentiary standard for termination cases is "clear and convincing," and the burden remains with the individual challenging the natural parent's rights throughout the proceeding.

[Mortenson v. Tangedahl](#), 317 N.W.2d 107 (N.D. 1982)

While it is important that a natural parent be given the opportunity to appear at a hearing on a petition for adoption, that right is not absolute, and courts are not required to grant a continuance as a matter of law. Contacts between defendant and the children were initiated by the children in order to play with their cousins, and was therefore insufficient to rebut finding of abandonment.

[Matter of Adoption of Gotvaslee](#), 312 N.W.2d 308 (N.D. 1981)

Father's claim that he did not intend to abandon his children (ages 5 & 6) coupled with evidence of some support payments and two visitations in five years was not sufficient to avoid a finding of abandonment.

[Interest of F.H.](#), 283 N.W.2d 202 (N.D. 1979)

Incarcerated father - unwed mother - father had no right to personally appear at termination hearing

## **Abuse/ Neglect**

[Interest of D.Q.](#), 2002 ND 188, 653 N.W.2d 713

Nomadic parent whose lifestyle flouted advice from medical providers and social service workers and who failed to obey truancy laws deprived her children and supported conclusion that deprivation was likely to continue.

(medical and educational neglect)

[Interest of Z.R. and J.V., Children](#), 1999 ND 214, 602 N.W.2d 723

History of domestic violence and abuse did not outweigh significant steps by parents to treat anger management issues and develop parenting skills

[Interest of L.F. and J.F.](#), 1998 ND 129, 580 N.W.2d 573

Mother's post-traumatic stress disorder and history of not taking advantage of services available to assist her in being reunited with her children supported the decision to terminate her parental rights because the children (ages 4 & 6) suffered detachment disorders which would become severe personality disorders if they did not receive proper emotional nurturing.

[Interest of D.R.](#), 525 N.W.2d 672 (N.D. 1994)

History of domestic abuse by father, and mother's limited intellectual functioning and failure to protect children (ages 5 & 6) created post-traumatic stress disorder in children. Trauma created need to prohibit parents from seeing children in foster care, and thus necessitated termination, rather than permanent foster care.

[Interest of C.K.H.](#), 458 N.W.2d 303 (N.D. 1990)

Incarcerated father abandoned oldest child, and formerly incarcerated father and mother suffering from multiple sclerosis used inappropriate discipline methods and subjected children (ages 11, 5, 4, 3, & 2) to substandard nutrition, hygiene, and supervision. Termination ordered, with open adoption for oldest child (from former relationship), so that mother could continue to have contact with child.

[Interest of A.M.A.](#), 439 N.W.2d 535 (N.D. 1989)

Evidence of deprivation due to physical abuse and inappropriate discipline of children (ages 3, 2, and 8 mo.) as stipulated by the mother, and prognostic evidence showed that parents may never be able to adequately provide care for their children even with extensive, long-term treatment.

[Interest of C.S.](#), 417 N.W.2d 846 (N.D. 1988)

Record of deprivation and abuse of children (ages 6, 4, and 2) by both parents, combined with prognostic evidence regarding mother's mental illness and ability to turn aside unacceptable behaviors outweighed evidence that the parents had recently adopted a more acceptable lifestyle.

[Asendorf v. M.S.S.](#), 342 N.W.2d 203 (N.D. 1983)

Deficiencies in the condition of the home and parenting behaviors were not abated by significant involvement by social services. Varying degrees of deprivation among the children (ages 6, 4, and 2) did not preclude a finding of deprivation as to them all because they were all being raised in the same environment. The level of Social Service's involvement and the lack of cooperation and progress during that time indicated that the conditions of deprivation were likely to continue.

[Interest of M.R.](#), 334 N.W.2d 848 (N.D. 1983)

Inappropriate discipline and failure to cooperate with social services justified termination. Doctor-patient privilege does not apply to psychological reports ordered by the court to facilitate a treatment plan for a family. The court may not take judicial notice of testimony from prior proceedings, but in termination proceedings, the juvenile court does not operate in a vacuum.

[Interest of R.A.S.](#), 321 N.W.2d 468 (N.D. 1982)

Order for judgment terminating parental rights was not a final judgment, but termination appropriate because even if the order had been final, there was sufficient evidence of abuse and physical, moral, and emotional deprivation to support a termination of parental rights.

[Interest of M.N.](#), 294 N.W.2d 635 (N.D. 1980)

Mental illness of both parents contributed to 9-year-old child's developmental delays, but termination appropriate because placing the child in special education removed the conditions causing the deprivation, and mother had not been hospitalized for mental illness since child's birth. Lower court was ordered to review the issue of termination and adoptability in one year.

[Interest of K.P.](#), 267 N.W.2d 1 (N.D. 1978)

Mother with mental illness, 4 children and tenuous relationship with husband unable to cope with the demands of caring for all of them- currently living in Louisiana - Dissent by Vogel (insufficient evidence to support termination for all children) - Dissent by Sand (father's ability to care for children not properly

considered)

[Interest of R.H.](#), 262 N.W.2d 719 (N.D. 1978)

4 kids under age 14 - unclean home with improper diet - termination reversed for failure to address whether conditions of deprivation likely to continue - social workers should not act as guardian at litem

[Interest of R.W.B.](#), 241 N.W.2d 546 (N.D. 1976) (criminal conviction)

Parents convicted of child abuse - parents had right to counsel prior to making statements to social services regarding child abuse allegations - termination proceedings involving same parents and another child are relevant with regard to whether the conditions causing deprivation are likely to continue - waiting 1 year to determine if parents could be rehabilitated was too long

[In re J.Z.](#), 190 N.W. 2d 27 (N.D. 1971)

Infant severely injured (broken toy lodged in throat) at the hands of violent alcoholic father - statements made during informal adjustments are privileged with regard to the juveniles, but not any adults involved

### **Adoption - procedure**

[Interest of D.J.H.](#), 401 N.W.2d 694 (N.D. 1987)

Mother challenged voluntary petition to terminate after order issued. Although the agency facilitated the adoption of the child paid for mother's attorney, the attorney represented the interests of the mother as they had been represented to the attorney, not the interests of the adoption agency.

[Interest of B.M.](#), 335 N.W.2d 321 (N.D. 1983)

14-year old mother vacated consent to placement to give custody of child to nurse in the hospital without following proper placement procedures. When the condition of deprivation is caused by an unlawful placement, the revocation of the placement terminates that deprivation.

### **Alcoholism and Mental Illness - Dual Diagnosis (parent)**

[Interest of B.N. & K.K.](#), 2003 ND 68, 660 N.W.2d 610

Lengthy history of social services involvement for issues including sexual abuse, drug abuse, domestic violence, general neglect, incarceration, and voluntary placement with grandparents. Probability of serious mental and emotional harm to children (ages 4 & 9), was established by prognostic evidence that parent's



inability to care for child will continue long enough to render improbable the successful assimilation of the child into a family of the parent's rights are not terminated.

[Interest of D.F.G. and E.K.B.](#), 1999 ND 216, 602 N.W.2d 697

Although voluntary temporary placements of child with social services are to be commended, repeated placements and mother's history of alcohol abuse and failure to comply with recommended treatments supported termination of parental rights.

[Kleingartner v. D.P.A.B.](#), 310 N.W.2d 575 (N.D. 1981)

Although mother presented evidence that she was undergoing a change of lifestyle and removing the conditions which caused the deprivation of her children (ages 1, 4, and 5), prognostic testimony regarding her probable inability to deal with the stresses of child-rearing in light of her mental illness difficulties was sufficient to terminate her parental rights.

[Interest of M.N.](#), 294 N.W.2d 635 (N.D. 1980)

Mental illness of both parents contributed to 9-year-old child's developmental delays, but termination in appropriate because placing the child in special education removed the conditions causing the deprivation, and mother had not been hospitalized for mental illness since child's birth. Lower court was ordered to review the issue of termination and adoptability in one year.

### **Alcoholism/ drug addiction (parent)**

[Interest of M.G.](#), 2010 ND 157, 786 N.W.2d 710

Long-term and intensive treatment for a parent is not required if it cannot be successfully undertaken in time to allow the child to be returned to the parental home without severe dislocation from emotional attachments formed during long-term foster care. Courts cannot allow a child to remain in indeterminative status midway between foster care and the obvious need for permanent placement.

[Interest of B.J.K.](#), 2005 ND 138, 701 N.W.2d 924

Parents' history of drug and alcohol abuse caused children to be deprived. Hoping that father would eventually successfully overcome chemical dependency issues was not sufficient to keep from terminating parental rights.

[Interest of A.K.](#), 2005 ND App 3, 696 N.W.2d 160

Termination - Mother addicted to meth - failed to take steps to provide a safe environment for children (ages 2 & 4)

[Interest of E.R.](#), 2004 ND 202, 688 N.W.2d 384

Termination - mother addicted to meth - father incarcerated for reckless endangerment - unclear whether mother would ever be able to care for child (age 2)

[Interest of T.F. and T.F.](#), 2004 N.D. 126, 681 N.W.2d 786

father's continued substance abuse and history of non-cooperation with social services demonstrated that re-unification of this Indian family not feasible - children age 4 & 6

[In re. J.P and D.P.](#), 2004 N.D. 25, 674 N.W.2d 273

Indian children (ages 4 & 5) incarcerated father with mental health/behavioral issues - alcohol addiction by both parents - history of deprivation

[Interest of K.S. and A.S.](#), 2002 ND 164, 652 N.W.2d 341

Mother's chronic alcohol abuse caused significant harm to children (ages 3,4, and 5) and termination of parental rights was proper because several attempts she made to seek treatment for addiction were unsuccessful.

[Interest of D.R.](#), 2001 ND 183, 636 N.W.2d 412

Chronic drug abuse by mother, accompanied by a series of relationships with men who abused both mother and children (ages 12 & 10) indicated a pattern of conduct showing deprivation was likely to continue and result in serious harm to child.

[Interest of N.H.](#), 2001 ND 143, 632 N.W.2d 451

History of drug and alcohol abuse by parents; domestic violence in the home and parental incarceration indicated deprivation of children (ages 13 & 11). Lack of parental cooperation with social service agencies is insufficient to establish deprivation but is pertinent to whether deprivation will continue.

[Interest of S.F.](#), 2000 ND 161, 615 N.W.2d 511

Father's problems with chemical dependency, anger management, and failure to cooperate with social services warranted termination.

[Interest of A.M.](#), 1999 ND 195, 601 N.W.2d 253

Mother's alcohol abuse problem caused children (ages 3 & 12) to be deprived and spend considerable time in foster care. Mother's unwillingness to seek treatment and children's need for stable environment supported termination.

[Interest of A.S.](#), 1998 ND 181, 584 N.W.2d 853

Body found in mother's home after a party where child was present and mother's chemical addiction supported termination of 4-year-old child. Long-term foster care is only advisable when adoption is not in the child's best interests.

[Eastburn v. B.E.](#), 545 N.W.2d 767 (N.D. 1996)

Children's "tumultuous" past with "nomadic" parents and continuing psychological problems, as well as mother's continuing instability and impulsiveness created sufficient basis to support a finding that the children (age 7 & 9) continued to be deprived.

[Boeddeker v. Reel](#), 517 N.W.2d 407 (N.D. 1994)

Parents of deprived children stipulated that conditions causing deprivation (drug and alcohol abuse) had been removed justified award of joint legal and shared custody, despite GAL's unsupported opinion that both parents were unfit because parents are presumed fit.

[Interest of M.D.K.](#), 447 N.W.2d 318 (N.D. 1989)

mother's steps to remedy problems with chronic alcohol abuse and general failure to supervise were not sufficient to show that deprivation was not likely to continue based on evidence of past behaviors. Conditions not primarily linked to lack of finances.

[Interest of J.N.R.](#), 322 N.W.2d 465 (N.D. 1982)

Evidence of domestic violence, mother's prescription drug abuse, father's low intellectual functioning and history of crime, and unsanitary condition in the home did not justify termination of children (ages 1 & 3) because it was unaccompanied by prognostic evidence to show the deprivation was likely to continue, and nothing indicated the children were abused or present during father's offensive conduct, and their development was not delayed.

## **Appeals**

[Adoption of S.M.G.](#), 2010 ND 173, 788 N.W.2d 582

A district court's decision cannot be reviewed when the court does not provide any indication of the evidentiary and theoretical basis for its decision. The trial court errs as a matter of law when it does not make the required findings.

[Matter of J.D.F.](#), 2010 ND 160, 787 N.W.2d 738

Natural mother appealed a district court order denying her motion to terminate natural father's parental rights. The plain language of N.D.R.App.P. 2.2 provides that a notice of appeal must be filed within thirty days after entry of an order terminating parental rights. The rule applies only to appeals from orders terminating parental rights and does not apply to appeals from orders denying a petition to terminate parental rights.

[Interest of K.J.](#), 2010 ND 46, 779 N.W.2d 635

Natural mother's parental rights were terminated. The application of the expedited appeal procedures under N.D.R.App.P. 2.2 did not unconstitutionally infringe on her right to procedural due process when the mother did not demonstrate any effect on her interests that occurred as a result, and did not show any risk of an erroneous deprivation of her interests through the procedures used.

[Interest of H.K.](#), 2010 ND 27, 778 N.W.2d 764

On appeal from a juvenile court decision, the Court will not entertain an objection raised for the first time on appeal unless the objection concerns obvious error that affected a substantial right of the juvenile. To determine whether a substantial right was affected, consideration must be given to the entire record and the probable effect of the alleged erroneous evidence in light of all the evidence.

[Hartleib v. Simes](#), 2009 ND 205, 776 N.W.2d 217

Natural mother petitioned to remove voluntarily created legal guardianship. Legal guardian sought to demonstrate exceptional circumstances to rebut the presumption that parental custody was in the child's best interests. On appeal, the complaining party bore the burden of proving a finding of fact was clearly erroneous regarding the best interest analysis.

[Interest of C.L.L.](#), 507 N.W.2d 900 (N.D. 1993) (final order)

adjudication of delinquency without disposition is not a final order which can be appealed.

[Interest of R.A.S.](#), 321 N.W.2d 468 (N.D. 1982) (final order)

Order for judgment terminating parental rights was not a final judgment, but termination appropriate because even if the order had been final, there was sufficient evidence of abuse and physical, moral, and emotional deprivation to support a termination of parental rights.

### **Child Support**

[Matter of J.D.F.](#), 2010 ND 160, 787 N.W.2d 738

Natural mother petitioned for termination of natural father's parental rights. Divorce decree included an agreement that if father became eligible for Social Security Disability benefits, father would apply for children's benefits to be paid to the mother in lieu of child support. Father became eligible, but Social Security Administration required mother to pursue children's benefits, which she had not done at hearing time. Non-payment of child support in this instance did not constitute evidence of father's failure to provide care or support in termination proceeding.

[Johnson v. Johnson](#), 2000 ND 170, 617 N.W.2d 97 (later proceeding at [Johnson v. Johnson](#), 2002 ND 151, 652 N.W.2d 315)

Five year-old child was "equitably adopted" for child support purposes, but perhaps not for other purposes.

[Interest of K.G.](#), 551 N.W.2d 554 (N.D. 1996)

12-year-old child found unruly and placed in foster care for 18 months; juvenile court properly applied child support guidelines to determine child support owed while child in foster care.

[Sprynczynatyk v. Celley](#), 486 N.W.2d 230 (N.D. 1992)

Social Service Board was not prevented from seeking reimbursement for support from father who had gained a termination of his own parental rights, because the termination suit named only the mother, so the Board was not bound by the judgment. Board represented the interests of the child, and the prior termination case only named the mother.

### **Cleanliness of home**

[Interest of D.N., D.N., C.N., Children](#), 2001 ND 71, 624 N.W.2d 686

Father's violence and mental health issues, and nutrition and hygiene problems related to children ages 16, 11 and 9 had not been resolved despite lengthy attempt to overcome parenting inabilities supported termination because the courts cannot allow the children to remain in an indeterminate status midway

between foster care and the obvious need for permanent placement.

[Interest of J.H. AND A.H.](#), 484 N.W.2d 482 (N.D. 1992)

Testimony from psychiatrist and other experts showed that the children (ages 8 & 9) were harmed as a result of the mother's mental illness, and that the harm was likely to continue.

[Asendorf v. M.S.S.](#), 342 N.W.2d 203 (N.D. 1983)

Deficiencies in the condition of the home and parenting behaviors were not abated by significant involvement by social services. Varying degrees of deprivation among the children (ages 6, 4, and 2) did not preclude a finding of deprivation as to them all because they were all being raised in the same environment. The level of Social Service's involvement and the lack of cooperation and progress during that time indicated that the conditions of deprivation were likely to continue.

[Interest of D.S.](#), 325 N.W.2d 654 (N.D. 1982)

Although low intellectually functioning parents showed genuine love for their children (ages 6,5,3 and 2), their inability to make reasonable decisions and manage their resources, accompanied by an animosity toward social services, showed that the conditions of deprivation that caused harm to the children was likely to continue.

[Interest of J.N.R.](#), 322 N.W.2d 465 (N.D. 1982)

Evidence of domestic violence, mother's prescription drug abuse, father's low intellectual functioning and history of crime, and unsanitary condition in the home did not justify termination of children (ages 1 & 3) because it was unaccompanied by prognostic evidence to show the deprivation was likely to continue, and nothing indicated the children were abused or present during father's offensive conduct, and their development was not delayed.

[Interest of R.H.](#), 262 N.W.2d 719 (N.D. 1978)

4 kids under age 14 - unclean home with improper diet - termination reversed for failure to address whether conditions of deprivation likely to continue - social workers should not act as guardian ad litem

### **Collateral Attack**

[Sprynczynatyk v. Celley](#), 486 N.W.2d 230 (N.D. 1992)

Social Service Board, who represented child's interests, was not prevented by res

judicata from seeking reimbursement for support from father who had gained a termination of his own parental rights, because the termination suit named only the mother.

[Mortenson v. Tangedahl](#), 317 N.W.2d 107 (N.D. 1982)

Parent's right to appear at hearing on petition for adoption, while important, is not absolute, and courts are not required to grant a continuance as a matter of law. Contacts between defendant and the children were initiated by the children in order to play with their cousins, and was therefore insufficient to rebut finding of abandonment.

### **Conditional Consent to Termination**

[Interest of C.R.H.](#), 2000 ND 222, 620 N.W.2d 175

In terminating parental rights under N.D.C.C. chapter 27-20 the trial court has no authority to make the termination contingent on the terminated parents receiving visitation rights upon the child's adoption.

### **Conditions Causing Deprivation Remedied/ Removed**

[Boeddeker v. Reel](#), 517 N.W.2d 407 (N.D. 1994)

Parents of deprived children stipulated that conditions causing deprivation (drug and alcohol abuse) had been removed justified award of joint legal and shared custody, despite GAL's unsupported opinion that both parents were unfit because parents are presumed fit.

[Interest of J.N.R.](#), 322 N.W.2d 465 (N.D. 1982)

Evidence of domestic violence, mother's prescription drug abuse, father's low intellectual functioning and history of crime, and unsanitary condition in the home did not justify termination of children (ages 1 & 3) because it was unaccompanied by prognostic evidence to show the deprivation was likely to continue, and nothing indicated the children were abused or present during father's offensive conduct, and their development was not delayed.

[Kleingartner v. D.P.A.B.](#), 310 N.W.2d 575 (N.D. 1981)

Although mother presented evidence that she was undergoing a change of lifestyle and removing the conditions which caused the deprivation of her children (ages 1, 4, and 5), prognostic testimony regarding her probable inability to deal with the stresses of child-rearing in light of her mental illness difficulties was sufficient to terminate her parental rights.

## **Constitutional issues**

[Interest of A.R.](#), 2010 ND 84, 781 N.W.2d 644

Juvenile was adjudicated delinquent for disorderly conduct. Violation of the disorderly conduct statute did not necessarily depend on the particular content of the speech involved, but on the behavior. Limitations exist to free speech, which include fighting words. Fighting words have been defined as personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction. The First Amendment protections did not prevent the State from punishing the juvenile's fighting words that tended to incite an immediate breach of the peace.

[In re H.K.](#), 2010 ND 27, 778 N.W.2d 764

Juvenile was adjudicated delinquent for disorderly conduct. The constitutional right to free speech did not protect fighting words that tended to incite an immediate breach of the peace. The definition of fighting words is elusive and constantly evolving, so a court must analyze the context of the speech. The circumstances surrounding the juvenile's repeated use of an offensive term directed toward an African American victim constituted fighting words not protected by the First Amendment.

[Interest of O.F., a child](#), 2009 ND 177, 773 N.W.2d 206

No substantive difference exists between a sanction imposed by a juvenile drug court program and probation revocation by a district court. Probation revocation, like parole revocation, is not a stage of a criminal prosecution, and the fact that one act formed the basis for both a criminal conviction and a probation revocation does not violate double jeopardy. The juvenile's double jeopardy rights were not violated when the facts used to impose a sanction by a juvenile drug court were later used to support an adjudication of delinquency.

[Interest of B.F.](#), 2009 ND 53, 764 N.W.2d 170

A judicial referee's determination of guilt was overturned by the juvenile court judge's order. The juvenile court judge's decision constituted an acquittal because it clearly represented a resolution of a factual element of the charged offense. The State was barred from appealing the acquittal due to application of double jeopardy principles to juvenile court proceedings involving adjudication of delinquent acts.

[Interest of I.B.A. and C.B.A.](#), 2008 ND 89, 748 N.W.2d 688

Natural mother did not have a due process right to appear at proceedings to terminate parental rights. If parents are represented by counsel and have an



opportunity to appear by deposition or other discovery technique, due process is satisfied. Remanded for another hearing with counsel present or for a record reflecting valid waiver of counsel.

[Interest of B.B.](#), 2007 ND 115, 735 N.W.2d 855

The right to confront and cross-examine witnesses does not apply to termination of parental rights, child protection, or juvenile deprivation proceedings because they are civil, not criminal, in nature. However, N.D.C.C. § 27-20-27(1) entitles a party in a juvenile hearing the opportunity to cross-examine an adverse witness. Natural father received a report of the adverse witness' testimony prior to the hearing, was informed he could subpoena the adverse witness, but did not. The natural father had the opportunity to cross-examine the adverse witness, but chose not to do so.

[Interest of R.W.S.](#), 2007 ND 37, 728 N.W.2d 326

Juvenile was required to wear handcuffs and in-court identification was allowed during trial. Juveniles have the same rights as adult defendants to be free from physical restraints. The juvenile court must independently decide whether to remove handcuffs through consideration of various factors. The admissibility of an in-court identification not preceded by a pretrial identification is determined by considering whether the in-court identification procedure is unnecessarily suggestive and susceptible to a substantial likelihood of irreparable misidentification. The five Biggers and Manson factors are used to evaluate admissibility.

[Interest of M.B.](#), 2006 ND 19, 709 N.W.2d 11

Natural father's parental rights to children were terminated. He argued he did not receive proper notice of the facts used to terminate his rights. Procedural due process required the petitioner to inform the parent of the factual circumstances behind the proposed termination. The parent would then have notice to prepare a meaningful defense against the petition. The petition and supporting affidavit provided the specific facts the petitioner relied on to terminate parental rights; although not necessarily the same facts the judicial referee relied on to reach the decision to terminate. The contents of the petition complied with statutory requirements and due process rights were not violated.

[Interest of R.K.](#), 2002 ND 111, 646 N.W.2d 699

Child was deprived, but placing 2-year-old child with grandparents was erroneous, as the purpose of the Uniform Juvenile Court Act is to provide for the care of the child in a family environment whenever possible, separating the child from a parent only when necessary for the child's welfare or in the interest of

public safety.

[Interest of T.K.](#), 2001 ND 127, 630 N.W.2d 38

Chaotic and violent relationship between parents, and repeated episodes of physical abuse; caused deprivation of special needs child (age 3) and infant brother. Constitutional right of parents to their children is not absolute; desire of mother to improve cannot outweigh mental and physical health concerns to the children

[Interest of E.J.H. and T.S.H.](#), 546 N.W.2d 361 (N.D. 1996)

sisters (ages 7 & 14) with different fathers - paternity established to one sister after petition to terminate parental rights was filed - maternal grandparents intervened, alleging right of sisters to live together; A natural parent has a constitutional right to the custody of his children, absent exceptional circumstances, which trigger a best interests analysis when custody with the natural parent is challenged

[Adoption of J.S.P.L.](#), 532 N.W.2d 653 (N.D. 1995)

Father incarcerated for killing children's mother in presence of the children (ages 12, 9 and 5) found to have abandoned them; father had no constitutional right to personally appear or cross-examine witnesses at termination hearing because he waived his right to counsel - his appearance would be traumatizing to the children

[Adoption of K.A.S.](#), 499 N.W.2d 558 (N.D. 1993)

Denial of court-appointed counsel to an indigent person whose parental rights are sought to be terminated is a violation of Equal Protection under the state constitution.

Matter of R.Y., Jr., 189 N.W.2d 644 (N.D. 1971)

The Uniform Juvenile Court Act limited juvenile court proceedings to bench trials. The mandate in North Dakota's constitution that the right of trial by jury remain inviolate neither enlarges nor restricts that right but merely preserves jury trials for all cases where it could have been demanded as a matter of right at common law. The juvenile court, as enacted by the Uniform Juvenile Court Act, was unknown at common law. Additionally, the Uniform Juvenile Court Act defined juvenile court proceedings as civil, not criminal in nature. Generally, federal and state constitutional provisions guaranteeing a jury trial do not apply to civil proceedings.

## **Counsel Issues**

[Matter of J.D.F.](#), 2010 ND 160, 787 N.W.2d 738

Guardian ad litem appointed by court was ordered to submit a report to the court prior to trial. The court subsequently required the guardian ad litem to either submit to cross-examination or withdraw the report. The report was withdrawn. The guardian ad litem acted as an attorney, not a parenting investigator, and was not required to submit an investigative report to the court or give testimony.

[Adoption of J.D.F.](#), 2009 ND 21, 761 N.W.2d 582

In the involuntary termination of parental rights proceeding, the court was required to inform the unrepresented natural father of his right to representation by counsel, including court appointed counsel if he was determined indigent. The trial court's failure to affirmatively inform was not harmless error. The record did not reflect that the natural father voluntarily, knowingly and intelligently waived his right to counsel.

[Interest of K.L. and M.S.](#), 2008 ND 131, 751 N.W.2d 677

A claim for ineffective assistance of counsel in termination proceedings was recognized. Review on direct appeal placed a heavy burden on the party claiming ineffective assistance of counsel because a record was necessary to examine the reasons underlying counsel's conduct. The evidence did not appear on the face of the record and the case was not remanded for the purpose of developing a record to support the claim. An unsuccessful trial strategy did not make defense counsel's assistance defective, and the court did not second-guess strategy through the distorting effects of hindsight.

[Interest of I.B.A. and C.B.A.](#), 2008 ND 89, 748 N.W.2d 688

Natural mother's counsel made a verbal motion to withdraw due to inability to contact client. A motion to withdraw must be in writing and state the last known address of the party represented. Notice of a motion to withdraw must be given by personal service, by registered or certified mail, or via a third-party commercial carrier providing a traceable delivery, directed to the party at the party's last known business or residence address.

[Interest of K.H.](#), 2006 ND 156, 718 N.W.2d 575

Under the revised version of N.D.C.C. § 27-20-26(1), a juvenile's right to counsel begins at custodial stages of proceedings. If an extrajudicial statement is obtained by violating this statutory right, the statement cannot be used against the child in a criminal proceeding. A juvenile's right to counsel can be waived even if the minor is of a young age, if the juvenile is represented by their parent,

guardian, or custodian.

[Paulson v. Paulson](#), 2005 ND 72, 694 N.W.2d 681

The parties agreed to court appointment of one person to act as both parenting investigator and attorney guardian ad litem for the child. Thus, the parties waived their right to object when the appointed person acted in violation of parenting investigator rules by acting as the child's advocate, and acted in violation of guardian ad litem rules by testifying at the hearing.

[Adoption of S.A.L.](#), 2002 ND 178, 652 N.W.2d 912

Incarcerated parent who had no contact with 9 year old child effectively waived right to counsel at termination hearing by inaction and waiting until 6 days before termination hearing to request assistance of counsel.

[Interest of R.D.B.](#), 1998 ND 15, 575 N.W.2d 420

15-year-old child found delinquent and ordered to perform community service for aggravated assault on another student. When a child and his parents knowingly, intelligently, and voluntarily waive their right to counsel in the juvenile court proceedings, the juvenile court need not appoint counsel. (waiver)

[Adoption of J.M.H.](#), 1997 ND 99, 564 N.W.2d 623

Incarcerated biological father abandoned child (age 8). The procedures for terminating the inmate's parental rights did not deprive him of due process and his conclusory allegations were insufficient to show ineffective assistance of counsel.

[Adoption of K.A.S.](#), 499 N.W.2d 558 (N.D. 1993)

Denial of court-appointed counsel to an indigent person whose parental rights are sought to be terminated is a violation of Equal Protection under the state constitution.

[Interest of B.S.](#), 496 N.W.2d 31 (N.D. 1993)

Juveniles have a right to representation at any stage of a delinquency proceeding, including questioning, but that right may be waived by a knowing, intelligent, and voluntary waiver by a parent, guardian or custodian.

[Interest of J.D.Z.](#), 431 N.W.2d 272 (N.D. 1988)

Confession of 10-year old was obtained in violation of the defendant's constitutional rights. The mere presence of a juvenile's parents during police

interrogation is insufficient to waive the juvenile's right to counsel.

[Interest of D.J.H.](#), 401 N.W.2d 694 (N.D. 1987)

Mother challenged voluntary petition to terminate after order issued. Although the agency facilitated the adoption of the child paid for mother's attorney, the attorney represented the mother's interests as they had been represented to the attorney, not the interests of the adoption agency.

[Interest of R.W.B.](#), 241 N.W.2d 546 (N.D. 1976) (when right to counsel attaches)

Parents convicted of child abuse - parents had right to counsel prior to making statements to social services regarding child abuse allegations - termination proceedings involving same parents and another child are relevant with regard to whether the conditions causing deprivation are likely to continue - waiting 1 year to determine if parents could be rehabilitated was too long

### **Deprivation without Termination**

[Interest of B.B.](#), 2010 ND 9, 777 N.W.2d 350

The juvenile court may extend a dispositional order if it finds the child continues to be deprived and reasonable efforts have been provided to finalize the permanent plan or reunify the child with the parents. The custodian has an obligation and right to determine the nature of care, placement, and treatment of a child considering the child's best interests.

[Interest of T.T.](#), 2004 N.D. 138, 681 N.W.2d 779

Family's history with social services, police, and other professionals following divorce; parental alienation - child age 10 - juvenile court has jurisdiction over divorce-related custody proceedings, but may take judicial notice of orders from those proceedings - child found deprived but placed with mother

[Interest of J.R. and L.R.](#), 2002 ND 78, 643 N.W.2d 699

Neglect and abuse of children (ages 18, 13 and 11) while with Mom in Mississippi was due to improper parental care, rather than lack of financial means. Justice Neumann concurred, raising concerns about jurisdiction.

[Interest of F.N.D.](#), 554 N.W.2d 456 (N.D. 1996)

Four-year-old girl abused by daycare provider's son; court properly ordered no contact with the daycare provider.

[Interest of E.J.H. and T.S.H.](#), 546 N.W.2d 361 (N.D. 1996)

Sisters (ages 7 & 14) with different fathers - paternity established to one sister after petition to terminate parental rights was filed - maternal grandparents intervened, alleging right of sisters to live together; A natural parent has a constitutional right to the custody of his children, absent exceptional circumstances, which trigger a best interests analysis when custody with the natural parent is challenged.

[Eastburn v. B.E.](#), 545 N.W.2d 767 (N.D. 1996)

Children's "tumultuous" past with "nomadic" parents and continuing psychological problems, as well as mother's continuing instability and impulsiveness created sufficient basis to support a finding that the children (age 7 & 9) continued to be deprived.

[Interest of C.M.](#), 532 N.W.2d 381 (N.D. 1995)

Stepfather sexually abused 4-year old while mother was incarcerated; initial petition for deprivation dismissed due to 30-day delay to continue investigation; second petition filed the next day was not barred by res judicata

[Adoption of K.S.H.](#), 442 N.W.2d 417 (N.D. 1989)

Father with mental illness repeatedly challenged child's placement with grandparents. Child (age 14) sought to be adopted by grandparents because he felt insecure about continued challenges by his father. Termination properly denied because no evidence that child's fears caused him harm.

[Interest of K.R.A.G.](#), 420 N.W.2d 325 (N.D. 1988)

Infant in the care of her 16-year-old mother was deprived

[Interest of C.S.](#), 382 N.W.2d 381 (N.D. 1986)

Habitual truancy - unapproved home school; Children who are habitually absent from school because they are following their parents' directions are not unruly, but may be deprived

[Interest of J.N.R.](#), 322 N.W.2d 465 (N.D. 1982)

Evidence of domestic violence, mother's prescription drug abuse, father's low intellectual functioning and history of crime, and unsanitary condition in the home did not justify termination of children (ages 1 & 3) because it was unaccompanied by prognostic evidence to show the deprivation was likely to continue, and nothing indicated the children were abused or present during

father's offensive conduct, and their development was not delayed.

[Interest of M.N.](#), 294 N.W.2d 635 (N.D. 1980)

Mental illness of both parents contributed to 9-year-old child's developmental delays, but termination is appropriate because placing the child in special education removed the conditions causing the deprivation, and mother had not been hospitalized for mental illness since child's birth. Lower court was ordered to review the issue of termination and adoptability in one year.

[Interest of R.H.](#), 262 N.W.2d 719 (N.D. 1978)

Deprivation of 4 children under 14 based on emotional and physical neglect and unclean house was not shown likely to continue, therefore termination order reversed and remanded. Social Services employees should not act as guardian ad litem.

[Interest of R.D.S.](#), 259 N.W.2d 636 (N.D. 1977)

Mother's mental illness which required medication and hospitalization did not support termination of child (age 10) because of insufficient evidence to show if conditions of deprivation were likely to continue - relevant inquiry is not whether there is a "better" home for the child - CJ Erickstad's dissent centered on goal of Juvenile Court Act to serve the best interests of the child

### **Deprivation - Insufficient Evidence**

[Interest of R.S.](#), 2010 ND 147, 787 N.W.2d 277

On review, a juvenile court's deprivation finding will not be overturned unless the finding was clearly erroneous. The deprivation finding was clearly erroneous because it was not supported by clear and convincing evidence. Evidence of deprivation was based entirely on speculation of the effect the parent's irresponsible decision-making may eventually have on the child. The record was devoid of any evidence of negative impact on the child.

[Interest of I.B.A. and C.B.A.](#), 2008 ND 89, 748 N.W.2d 688

The juvenile court must make in-depth individual findings for each parent regarding whether the child is deprived and whether deprivation is likely to continue. The facts necessary to terminate the parental rights of a parent are unique to each parent.

[Interest of T.A.](#), 2006 ND 210, 722 N.W.2d 548

To prove deprivation is likely to continue or will not be remedied, the petitioner

cannot rely on past deprivation alone, but must provide prognostic evidence, demonstrating the deprivation will continue.

[Interest of A.V.](#), 554 N.W.2d 461 (N.D. 1996)

Baby shaken - unclear who shook him; In a child deprivation proceeding, the petitioner must prove that a child's injury was caused either directly by, or through the actions of, a parent or parental substitute.

[Interest of L.N.](#), 319 N.W.2d 801 (N.D. 1982)

Rights of mother, with low IQ who had poor parenting abilities and was the subject of several unsubstantiated abuse and neglect reports, were improperly terminated as child was developing normally in her care. Although the overriding interest in termination proceedings is the best interests of the child, the court's role is to determine whether the child is deprived, not whether continuing custody of the child with the parent is in the child's best interests.

[McGurren v. S.T.](#), 241 N.W.2d 690 (N.D. 1976)

The fact that the mother was 13 years old, standing alone, was insufficient to support a termination of parental rights.

### **Developmentally Disabled Parent**

[Interest of W.E.](#), 2000 ND 208, 619 N.W.2d 494

Positive reports regarding mildly retarded mother's improving housekeeping and parenting skills and testimony of church members pledging their support and assistance in caring for the children weighed against termination.

[Heitkamp v. L.J.](#), 436 N.W.2d 558 (N.D. 1989)

Although the record showed that the mother's other burdens had decreased, prognostic evidence showed that she would not be able to meet the minimum community standards required to parent her mentally retarded sons (ages 16 & 20). The minimum community standards regarding a special needs child is care that will reasonably contribute to the limited potential of that child in order to avoid the drastic and permanent consequences of lesser efforts.

[Jacobson v. J.A.L.](#), 432 N.W.2d 876 (N.D. 1988)

Although a mentally retarded individual has the right to "appropriate treatment, services, and habilitation" for their disabilities, the evidence showed that the mother would never gain sufficient skills to provide adequate care for her special needs child (suffering from cerebral palsy) by herself. The state is not required to



provide permanent and constant foster care for both the mother and child in order to preserve the parent/ child relationship

[Interest of D.S.](#), 325 N.W.2d 654 (N.D. 1982)

Although low intellectually functioning parents showed genuine love for their children (ages 6,5,3 and 2), their inability to make reasonable decisions and manage their resources, accompanied by an animosity toward social services, showed that the conditions of deprivation that caused harm to the children was likely to continue.

### **Domestic Violence**

[Interest of T.K.](#), 2001 ND 127, 630 N.W.2d 38

Chaotic and violent relationship between parents, and repeated episodes of physical abuse; caused deprivation of special needs child (age 3) and infant brother. Constitutional right of parents to their children is not absolute; desire of mother to improve cannot outweigh mental and physical health concerns to the children

[In the Interest of C.R., a Minor Child](#), 1999 ND 221, 602 N.W.2d 520

Father's act of terrorizing mother and subsequent incarceration did not establish abandonment of two year old child, but length of incarceration may support termination if prognostic evidence shows inability to parent will continue long enough to make successful assimilation of the child into a permanent family improbable.

[Interest of Z.R. and J.V., Children](#), 1999 ND 214, 602 N.W.2d 723

History of domestic violence and abuse did not outweigh significant steps by parents to treat anger management issues and develop parenting skills

[Interest of A.J.K.](#), 1998 ND App 3, 582 N.W.2d 13

Child (age 17) returned to parent's custody after incident of domestic violence; temporary shelter care order not withdrawn because child not yet 18

[Interest of L.F. and J.F.](#), 1998 ND 129, 580 N.W.2d 573

Mother's post-traumatic stress disorder and history of not taking advantage of services available to assist her in being reunited with her children supported the decision to terminate her parental rights because the children (ages 4 & 6) suffered detachment disorders which would become severe personality disorders

if they did not receive proper emotional nurturing.

[Adoption of J.S.P.L.](#), 532 N.W.2d 653 (N.D. 1995) (related case at [Matter of Norman](#), 521 N.W.2d 395 (N.D. 1994))

Father incarcerated for killing children's mother in presence of the children (ages 12, 9 and 5) found to have abandoned them; father had no constitutional right to personally appear or cross-examine witnesses at termination hearing because he waived his right to counsel - his appearance would be traumatizing to the children.

[Interest of D.R.](#), 525 N.W.2d 672 (N.D. 1994)

History of domestic abuse by father, and mother's limited intellectual functioning and failure to protect children (ages 5 & 6) created post-traumatic stress disorder in children. Trauma created need to prohibit parents from seeing children in foster care, and thus necessitated termination, rather than permanent foster care.

[Matter of Norman](#), 521 N.W.2d 395 (N.D. 1994) (related case at [Adoption of J.S.P.L.](#), 532 N.W.2d 653 (N.D. 1995))

Father incarcerated for killing mother in the presence of the children. Children placed in home of maternal aunt. Father moved to remove the guardian based on abuse and neglect. Oral argument on the motion was properly denied.

[Interest of J.J.H.](#), 343 N.W.2d 355 (N.D. 1984)

Statements made in a hearing where termination is not an issue are inadmissible in a termination hearing, but statements made at a hearing where termination could be an issue are admissible in determining whether deprivation is likely to continue or whether the child will be harmed by continuing the parental relationship. Evidence of physical abuse in the home engendered by the presence of a child is indicative that the child is at risk of harm when visiting parents, even if the child has not been physically harmed in the past.

[Interest of J.N.R.](#), 322 N.W.2d 465 (N.D. 1982)

Evidence of domestic violence, mother's prescription drug abuse, father's low intellectual functioning and history of crime, and unsanitary condition in the home did not justify termination of children (ages 1 & 3) because it was unaccompanied by prognostic evidence to show the deprivation was likely to continue, and nothing indicated the children were abused or present during father's offensive conduct, and their development was not delayed.

### **Evidence Issues**

[Matter of J.D.F.](#), 2010 ND 160, 787 N.W.2d 738

The petition for termination of natural father's parental rights was solely based on a claim of abandonment. The natural mother, who was seeking termination of the father's parental rights, sought to introduce evidence of physical or verbal abuse against the mother by the natural father. This evidence was not relevant to determining whether the natural father abandoned the child.

[Interest of D.H.](#), 2010 ND 103, 783 N.W.2d 12

Lack of cooperation with social services constituted prognostic evidence that the child's deprivation was likely to continue. Evidence establishing that the parent did not take advantage of the opportunity to develop a genuine relationship with the child supported the court's finding that the causes and conditions of deprivation were likely to continue due to the parent's inability to provide adequate care.

[Interest of B.B.](#), 2010 ND 9, 777 N.W.2d 350

A pattern of parental conduct can form a basis for a reasonable prediction of future behavior. Testimony by lay witnesses regarding chemical dependency and mental illness provided sufficient prognostic evidence about chemical dependency and mental illness.

[Interest of A.B.](#), 2009 ND 116, 767 N.W.2d 817

At time of termination proceedings, natural mother had not begun to address the issues underlying child's deprivation. The record established the mother did not have the willingness or ability to change her behavior. The State was not required to provide long-term and intensive treatment if it could not be successfully undertaken in a time frame that would enable the child to return to the parental home without causing severe dislocation from emotional attachments formed during long-term foster care.

[Interest of J.S.L.](#), 2009 ND 43, 763 N.W.2d 783

A child protection assessment report, with information regarding the natural father's chemical dependency and mental health, was admitted under the residual exception to the hearsay rule. This was abuse of discretion because the report was not more probative than the live testimony of witnesses who provided the information in the report. The introduction of the inadmissible hearsay evidence was not reversible error as it did not induce the court to make essential findings regarding the father's mental health and chemical dependency. There was sufficient evidence admitted through testimony at trial of the father's mental health and chemical dependency.

[Interest of K.L. and M.S.](#), 2008 ND 131, 751 N.W.2d 677

Parent's failure to follow through with provided services is not the fault of Social Services.

[Interest of J.C.](#), 2007 ND 111, 736 N.W.2d 451

A juvenile court may not declare a parent in default and terminate parental rights without some evidentiary basis in the record to support the termination.

[Interest of F.F.](#), 2006 ND 47, 711 N.W.2d 144

A court may terminate parental rights solely on findings of deprivation and that the child has been in foster care, in the care, custody, and control of the department, or a county social service board for at least four hundred fifty out of the previous six hundred sixty nights.

[Guardianship of Barros](#), 2005 ND 122, 701 N.W.2d 402

As a matter of law, a voluntary guardianship creates an exceptional circumstance that triggers the best interest of the child test, as the parent has not been adjudicated an unfit parent. The petitioner seeking to remove the guardianship must initially prove, by a preponderance of the evidence, the impediments leading to the creation of the guardianship have been removed. The burden of persuasion then shifts to the legal guardian to rebut the presumption that the best interests of the child are in custody of the natural parent and prove by a preponderance of the evidence that it is in the best interests of the child to continue the guardianship.

[Interest of K.N.H.](#), 2005 ND App 9, 704 N.W.2d 573

Order terminating father's parental rights to his three children was upheld because of ample evidence in the record that the father subjected the children to aggravated circumstances under N.D.C.C. § 27-20-02(3)(f)(1).

[Interest of R.O.](#), 2001 ND 137, 631 N.W.2d 159

history of drug abuse and general neglect of children ages 3, 2, and 1. In a parental-rights-termination proceeding alleging reports of child abuse or neglect, N.D.C.C. 50-25.1-10 abrogates the physician-patient and psychotherapist-patient privilege in N.D.R.Ev. 503. Under federal law, upon a finding of good cause, a trial court may order disclosure of information about a person's alcohol or drug treatment at a federally assisted facility, but the court must restrict disclosure to essential matters.

[Interest of C.H.](#), 2001 ND 37, 622 N.W.2d 720

Unruliness (run away from visitation with Dad) caused by alienation by Mom against Dad; children placed with Mom because they would suffer no further harm in her custody (jurisdiction over unruly child)

[Interest of C.R.M.](#), 552 N.W.2d 324 (N.D. 1996)

16-year-old accused of Murder, Accomplice to Attempted Robbery, and Criminal Street Gang Crimes- shooting a woman in parked car; rules of evidence inapplicable in juvenile transfer proceedings

[Odegard v. T.M.](#), 512 N.W.2d 441 (N.D. 1994)

Court found reasonable grounds existed for transfer of juvenile to district court. Reasonable grounds is equivalent to probable cause. Probable cause is a minimal burden of proof; if it appears to be so or there is a definite probability based on substantial evidence, the standard of probable cause has been met. On review, the state met its burden of persuasion.

[Interest of J.D.Z.](#), 431 N.W.2d 272 (N.D. 1988)

Confession of 10-year old was obtained in violation of the defendant's constitutional rights. The mere presence of a juvenile's parents during police interrogation is insufficient to waive the juvenile's right to counsel.

[Interest of J.J.H.](#), 343 N.W.2d 355 (N.D. 1984)

Statements made in a hearing where termination is not an issue are inadmissible in a termination hearing, but statements made at a hearing where termination could be an issue are admissible in determining whether deprivation is likely to continue or whether the child will be harmed by continuing the parental relationship. Evidence of physical abuse in the home engendered by the presence of a child is indicative that the child is at risk of harm when visiting parents, even if the child has not been physically harmed in the past.

[Interest of M.R.](#), 334 N.W.2d 848 (N.D. 1983)

Inappropriate discipline and failure to cooperate with social services justified termination. Doctor-patient privilege does not apply to psychological reports ordered by the court to facilitate a treatment plan for a family. The court may not take judicial notice of testimony from prior proceedings, but in termination proceedings, the juvenile court does not operate in a vacuum.

[Interest of R.W.B.](#), 241 N.W.2d 546 (N.D. 1976) (suppress statements)

Parents convicted of child abuse - parents had right to counsel prior to making statements to social services regarding child abuse allegations - termination proceedings involving same parents and another child are relevant with regard to whether the conditions causing deprivation are likely to continue - waiting 1 year to determine if parents could be rehabilitated was too long

[In re J.Z.](#), 190 N.W. 2d 27 (N.D. 1971)

(privilege) infant severely injured (broken toy lodged in throat) at the hands of violent alcoholic father - statements made during informal adjustments are privileged with regard to the juveniles, but not any adults involved

### **Frustrate visitation**

[Adoption of A.M.B.](#), 514 N.W.2d 670 (N.D. 1994)

Natural mother's actions in frustrating father's attempted visitation of 2-year-old did not rebut the evidence that he had abandoned the child when the father paid no child support, only attempted to visit the child twice, and did not attempt to negotiate visitation when offered by the mother.

[Matter of Adoption of Gotvaslee](#), 312 N.W.2d 308 (N.D. 1981)

Father's claim that he did not intend to abandon his children (ages 5 & 6) coupled with evidence of some support payments and two visitations in five years was not sufficient to avoid a finding of abandonment.

### **Grandparents/ Psychological parents**

[In Re. D.P.O.](#), 2003 N.D. 127, 667 N.W.2d 590

Incarcerated mother - father was not aware of paternity - child (age 1) placed with maternal grandparents by mother at birth - Although grandparents were the child's psychological parents, the rights of the natural parents must prevail unless the court finds that custody with the natural parent is not in the child's best interest.

[Interest of B.N. & K.K.](#), 2003 ND 68, 660 N.W.2d 610

Lengthy history of social services involvement for issues including sexual abuse, drug abuse, domestic violence, general neglect, incarceration, and voluntary placement with grandparents. Probability of serious mental and emotional harm to children (ages 4 & 9), was established by prognostic evidence that parent's inability to care for child will continue long enough to render improbable the successful assimilation of the child into a family of the parent's rights are not

terminated.

[Johnson v. Johnson](#), 2000 ND 170, 617 N.W.2d 97 (later proceeding at [Johnson v. Johnson](#), 2002 ND 151, 652 N.W.2d 315)

Five year-old child was "equitably adopted" for child support purposes, but perhaps not for other purposes.

[Interest of Z.R. and J.V., Children](#), 1999 ND 214, 602 N.W.2d 723

History of domestic violence and abuse did not outweigh significant steps by parents to treat anger management issues and develop parenting skills

[Interest of E.J.H. and T.S.H.](#), 546 N.W.2d 361 (N.D. 1996)

sisters (ages 7 & 14) with different fathers - paternity established to one sister after petition to terminate parental rights was filed - maternal grandparents intervened, alleging right of sisters to live together; A natural parent has a constitutional right to the custody of his children, absent exceptional circumstances, which trigger a best interests analysis when custody with the natural parent is challenged

[Adoption of K.S.H.](#), 442 N.W.2d 417 (N.D. 1989)

Father with mental illness repeatedly challenged child's placement with grandparents. Child (age 14) sought to be adopted by grandparents because he felt insecure about continued challenges by his father. Termination properly denied because no evidence that child's fears caused him harm.

### **Indian Child Welfare Act (ICWA)**

[Adoption of C.D.](#), 2008 ND 128, 751 N.W.2d 236

District court determined child was an Indian Child under ICWA. Reversed and remanded as natural mother and tribe failed to satisfy their burden of production. The party asserting eligibility for membership in the tribe must be authorized to speak on the tribe's behalf. The burden of proof was on the party asserting applicability of ICWA. Allegations in pleadings, motions, and briefs were not evidence. Evidence of Indian heritage was not sufficient, as ICWA preference is political, not racial. Evidence that the biological parent was in the process of enrollment was not enough if the tribe required enrollment for membership.

[Interest of A.B.](#), 2005 ND 216, 707 N.W.2d 75

An order granting a tribe leave to intervene is not final and is not appealable as of right. The rationale underlying the rule is that a grant of intervention merely

allows the action to proceed and does not finally determine the rights or claims of any party. All parties retain the right to appeal upon entry of a final judgment or order.

[Interest of T.F. and T.F.](#), 2004 N.D. 126, 681 N.W.2d 786

father's continued substance abuse and history of non-cooperation with social services demonstrated that re-unification of this Indian family not feasible - children age 4 & 6

[In re. J.P. and D.P.](#), 2004 N.D. 25, 674 N.W.2d 273

Indian children (ages 4 & 5) incarcerated father with mental health/behavioral issues - alcohol addiction by both parents - history of deprivation

[In re. A.B.](#) 2003 ND 98, 663 N.W.2d 625

ICWA will not require a transfer of a child custody proceeding if good cause exists. E.g., if the proceeding is at an advanced stage, or if the evidence to decide the case cannot be adequately presented in the tribal court without undue hardship to the parties or witnesses. - child age 9

[Interest of M.S.](#), 2001 ND 68, 624 N.W.2d 678

To terminate parental rights for an Indian child, ICWA requires proof beyond a reasonable doubt that active efforts were made to prevent the breakup of the Indian family, and that the child is likely to suffer serious emotional or physical harm if custody remains with the parent. When cultural bias is not implicated in parental termination proceedings, qualified expert witness testimony required under ICWA can be met with testimony of a professional person having substantial education and experience in the area of his or her specialty even though that professional does not have specific experience or knowledge of Indian customs, tradition, or culture

[Interest of A.L. and J.L.](#), 2001 ND 59, 623 N.W.2d 418

History of domestic violence, chemical abuse and lack of appropriate supervision for children ages 8&9. Counsel's unsupported statements about children's potential eligibility for enrollment in a particular Indian tribe and other unknown Indian tribes are insufficient to trigger provisions of ICWA requiring notice of termination proceedings to an Indian child's tribe.

[Interest of L.D.R.T.](#), 391 N.W.2d 594 (N.D. 1986)

Indian Child Welfare Act provisions did not apply to voluntary terminations.



## **Incarcerated Parent**

[Interest of M.G.](#), 2010 ND 157, 786 N.W.2d 710

Social services was not required to facilitate contact between natural mother and child during natural mother's incarceration when she had failed to take advantage of any of the reunification efforts offered by social services before she went to prison.

[Interest of D.C.S.H.C.](#), 2007 ND 102, 733 N.W.2d 902

Incarcerated natural mother did not have a constitutional due process right to personally appear at the proceeding for termination of parental rights. In this case her due process rights were satisfied by her limited appearance via telephone. Whether a parent-prisoner's rights to procedural due process are satisfied by a limited appearance by telephone requires a case-by-case balancing of the Eldridge factors to ensure that notice and a meaningful opportunity to be heard exist.

[Interest of D.D.](#), 2006 ND 30, 708 N.W.2d 900

Although incarceration, by itself, does not establish abandonment of a child for purposes of terminating parental rights, the probability of serious mental and emotional harm to the child may be established by prognostic evidence that a parent's current inability to properly care for the child will continue long enough to make the successful assimilation of the child into a family unlikely if the parent's rights are not terminated. The parent must be able to show present capacity or capacity within the near future, to be an adequate parent.

[Interest of E.R.](#), 2004 ND 202, 688 N.W.2d 384

Termination - mother addicted to meth - father incarcerated for reckless endangerment - unclear whether mother would ever be able to care for child (age 2)

[In Re. D.P.O.](#), 2003 N.D. 127, 667 N.W.2d 590

Incarcerated mother - father was not aware of paternity - child (age 1) placed with maternal grandparents by mother at birth - Although grandparents were the child's psychological parents, the rights of the natural parents must prevail unless the court finds that custody with the natural parent is not in the child's best interest.

[Adoption of S.A.L.](#), 2002 ND 178, 652 N.W.2d 912

Incarcerated parent who had no contact with 9 year old child effectively waived

right to counsel at termination hearing by inaction and waiting until 6 days before termination hearing to request assistance of counsel.

[In the Interest of C.R., a Minor Child](#), 1999 ND 221, 602 N.W.2d 520

Father's act of terrorizing mother and subsequent incarceration did not establish abandonment of two year old child, but length of incarceration may support termination if prognostic evidence shows inability to parent will continue long enough to make successful assimilation of the child into a permanent family improbable.

[Adoption of J.M.H.](#), 1997 ND 99, 564 N.W.2d 623

Incarcerated biological father abandoned child (age 8). The procedures for terminating the inmate's parental rights did not deprive him of due process and his conclusory allegations were insufficient to show ineffective assistance of counsel.

[Novak v. J.L.D.](#), 539 N.W.2d 73 (N.D. 1995)

Parent's voluntary criminal act caused him to be incarcerated for a substantial amount of time, thereby preventing him from providing care and nurturing for his child. The child's need to be assimilated into a stable family outweighed father's request that the child remain in foster care until he was able to take custody.

[Adoption of J.S.P.L.](#), 532 N.W.2d 653 (N.D. 1995) (see also [Matter of Norman](#), 521 N.W.2d 395 (N.D. 1994))

Father incarcerated for killing children's mother in presence of the children (ages 12, 9 and 5) found to have abandoned them; father had no constitutional right to personally appear or cross-examine witnesses at termination hearing because he waived his right to counsel - his appearance would be traumatizing to the children.

[Adoption of J.W.M.](#), 532 N.W.2d 372 (N.D. 1995)

Incarcerated father who had intermittent past conduct with child (age 6) and who was allowed to give testimony via recorded deposition at termination hearing did not have his constitutional rights violated by procedure used at trial. Dissent argued that termination was improper because child was not abandoned. Natural father's failure to pay child support warranted a court order, not termination.

[Matter of Norman](#), 521 N.W.2d 395 (N.D. 1994) (See also [Adoption of J.S.P.L.](#), 532 N.W.2d 653 (N.D. 1995))

Father incarcerated for killing mother in the presence of the children. Children placed in home of maternal aunt. Father moved to remove the guardian based on abuse and neglect. Oral argument on the motion was properly denied.

[Adoption of K.A.S.](#), 499 N.W.2d 558 (N.D. 1993)

Denial of court-appointed counsel to an indigent person whose parental rights are sought to be terminated is a violation of Equal Protection under the state constitution. (Incarcerated father opposing adoption)

[Interest of F.H.](#), 283 N.W.2d 202 (N.D. 1979)

Incarcerated father's allegations that the notice was insufficient were not supported and his constitutional rights were not violated when he was denied the opportunity to appear in person because he was represented by counsel at the hearing. The court concluded that 1-year-old's future should not be burdened by protecting parental rights that have never been exercised and parental obligations that have never been fulfilled.

### **Juvenile Delinquency/ Unruliness**

[State v. Poitra](#), 2010 ND 137, 785 N.W.2d 225

Juvenile was transferred from juvenile court to adult district court for criminal proceedings. Juvenile argued for suppression of evidence obtained by search warrant because he did not have counsel at execution of the warrant. The juvenile had the right to an attorney at custodial, post-petition and informal adjustment stages. Collection of evidence was non-custodial and the juvenile was not entitled to counsel and did not have a choice whether to provide evidence when the search warrant was issued.

[Interest of H.K.](#), 2010 ND 27, 778 N.W.2d 764

The petition must provide the facts which bring the child within the jurisdiction of the juvenile court. Such facts are necessary to provide notice to respondents so they may prepare for the hearing and participate meaningfully in it.

[Interest of R.P.](#), 2008 ND 39, 745 N.W.2d 642

State appealed juvenile referee order to suppress results of Intoxilyzer test. The juvenile had a limited right to consult with a parent, guardian, custodian or legal counsel before deciding to submit to chemical testing. The mere presence of a juvenile's parent did not constitute representation of the juvenile. A totality of the circumstances test applies to determining reasonableness of opportunity to consult.

[Interest of L.B.B.](#), 2005 ND 220, 707 N.W.2d 469

Juvenile appealed delinquency adjudication resulting from a finding that he committed gross sexual imposition. Reversed based on insufficient evidence to prove beyond a reasonable doubt. Proof beyond a reasonable doubt of a sexual act required specific evidence that an act clearly defined by N.D.C.C. § 12.1-20-02(3) occurred. Further proceedings against the juvenile were prohibited by double jeopardy.

[In re. Z.C.B.](#), 2003 N.D. 151, 669 N.W.2d 478

Minor was not in custody for purposes of Miranda when officer smelled alcohol at routine traffic stop and asked if he had been drinking.

[Interest of R.K.E.](#), 1999 ND 106, 594 N.W.2d 702

Continued delinquent acts at YCC justified extension of child's custody with DJS for an additional 2 years; juvenile court had the authority to do so.

[Interest of R.D.B.](#), 1998 ND 15, 575 N.W.2d 420

15-year-old child found delinquent and ordered to perform community service for aggravated assault on another student. When a child and his parents knowingly, intelligently, and voluntarily waive their right to counsel in the juvenile court proceedings, the juvenile court need not appoint counsel. (aggravated assault)

[Rainesalo v. P.A.](#), 1997 ND 146, 566 N.W.2d 422

Testimony of investigating sergeant was sufficient to find juvenile committed conspiracy to commit reckless endangerment and reckless endangerment by throwing rocks off the roof of a building. (reckless endangerment)

[Interest of J.C.S.](#), 1997 ND 126, 565 N.W.2d 759

Sufficient evidence of an agreement and an overt act existed to find juvenile (age 13) committed conspiracy to commit unlawful entry into or concealment within a motor vehicle. (unlawful entry into motor vehicle)

[Interest of K.S.](#), 500 N.W.2d 603 (N.D. 1993)

Minor in possession is not a strict liability offense, but requires that the minor exercise some control over the alcohol in his or her possession.

[Anderson v. J. D.](#), 494 N.W.2d 161 (N.D. 1992)

Unauthorized control over a motor vehicle requires some element of control, and a minor who knew the car was being driven without consent, but remained in the back seat as a passenger did not exercise either actual or apparent authority over the vehicle.

[Interest of C.S.](#), 382 N.W.2d 381 (N.D. 1986) (actions of parents)

### **Juvenile Parents**

[D.L.D. v. ND Dept. of Human Services](#), 495 N.W.2d 299 (N.D. 1993)

Termination of parental rights of 16-year-old father housed at Home on the Range was proper because father would not be able to provide adequate care for at least five years and secondary resources proposed by the father would act as a substitute, rather than an aid, for the parent.

[Interest of T.J.O.](#), 462 N.W.2d 631 (N.D. 1990)

14-year-old father would be unable to provide adequate care to the child for 3-5 years, even with family support.

[Interest of K.R.A.G.](#), 420 N.W.2d 325 (N.D. 1988)

Infant in the care of her 16-year-old mother was deprived

[Interest of R.M.B.](#), 402 N.W.2d 912 (N.D. 1987)

Although there was evidence that teen-aged mother voluntarily placed the child (age 6) with social services and remained in contact with social services and the child by telephoning and providing some monetary support while she attended vocational training out of state, other prognostic and testimonial evidence indicating that she was not committed to the parent-child relationship, including voluntary termination petition that was withdrawn at the hearing, supported the finding of abandonment and deprivation.

[Interest of J.K.S.](#), 356 N.W.2d 88 (N.D. 1984)

Unmarried minor mother had sporadic contact with child (age 6) who had special needs due to premature birth. Subsequent attempts to improve mother's parenting skills were unsuccessful. . Emotional attachment of child to her foster family was also considered, as removing the child would cause severe emotional harm.

[Interest of J.J.H.](#), 343 N.W.2d 355 (N.D. 1984)

Statements made in a hearing where termination is not an issue are inadmissible

in a termination hearing, but statements made at a hearing where termination could be an issue are admissible in determining whether deprivation is likely to continue or whether the child will be harmed by continuing the parental relationship. Evidence of physical abuse in the home engendered by the presence of a child is indicative that the child is at risk of harm when visiting parents, even if the child has not been physically harmed in the past.

[Interest of B.M.](#), 335 N.W.2d 321 (N.D. 1983)

14-year old mother vacated consent to placement to give custody of child to nurse in the hospital without following proper placement procedures. When the condition of deprivation is caused by an unlawful placement, the revocation of the placement terminates that deprivation.

[McGurren v. S.T.](#), 241 N.W.2d 690 (N.D. 1976)

The fact that the mother was 13 years old, standing alone, was insufficient to support a termination of parental rights.

### **Juvenile Court issues**

[Interest of A.S. and N.S.](#), 2007 ND 83, 733 N.W.2d 232

Juvenile court denied natural mother's second continuance request. On review, the particular facts and circumstances of the case were examined because no mechanical test exists to determine whether the juvenile court abused its discretion. Based on the ample time natural mother had to comply with Social Services' requirements and the juvenile court's order, the juvenile court did not act unreasonably, arbitrarily, or unconscionably when it denied the continuance and did not abuse its discretion.

[Interest of M.B.](#), 2006 ND 19, 709 N.W.2d 11

Natural father argued the juvenile referee improperly delegated judicial authority when proposed findings of fact and conclusions of law were adopted without change. When the juvenile referee signed the proposed findings of fact, they became the court's findings and were not overturned because they were not clearly erroneous. Trial courts are discouraged from verbatim adoption of only one party's proposed findings of fact and conclusions of law and encouraged to prepare its own.

[Interest of M.C.H.](#), 2001 ND 205, 637 N.W.2d 678

Juveniles between the ages of seven and fourteen have no common law right to a presumption of incapacity to commit a crime, their mental capacity to commit

crimes has been declared by statute.

[Interest of A.B.](#), 2001 ND 111, 627 N.W.2d 776

Escape from YCC; only the court of the child's residence can issue disposition, regardless of where delinquency proceedings were commenced.

[Interest of C.H.](#), 2001 ND 37, 622 N.W.2d 720

Unruliness (run away from visitation with Dad) caused by alienation by Mom against Dad; children placed with Mom because they would suffer no further harm in her custody

[Interest of R.K.E.](#), 1999 ND 106, 594 N.W.2d 702

Continued delinquent acts at YCC justified extension of child's custody with DJS for an additional 2 years; juvenile court had the authority to do so.

[Interest of A.J.K.](#), 1998 ND App 3, 582 N.W.2d 13

Child (age 17) returned to parent's custody after incident of domestic violence; temporary shelter care order not withdrawn because child not yet 18

[Eastburn v. B.E.](#), 545 N.W.2d 767 (N.D. 1996)

Children's "tumultuous" past with "nomadic" parents and continuing psychological problems, as well as mother's continuing instability and impulsiveness created sufficient basis to support a finding that the children (age 7 & 9) continued to be deprived. (extending disposition)

[Interest of C.L.L.](#), 507 N.W.2d 900 (N.D. 1993) (final order)

adjudication of delinquency without disposition is not a final order which can be appealed.

[Sprynczynatyk v. Celley](#), 486 N.W.2d 230 (N.D. 1992)

Social Service Board was not prevented from seeking reimbursement for support from father who had gained a termination of his own parental rights, because the termination suit named only the mother, so the Board was not bound by the judgment. Board represented the interests of the child, and the prior termination case only named the mother.

**Mental/ Psychological/ Behavioral Condition (Parent)**

[Interest of T.J.L.](#), 2004 N.D. 142, 682 N.W.2d 735

parents with mental illness and low intellect, unclean home, general neglect, non-cooperation with social services - child age 3

[Interest of D.N., D.N., C.N., Children](#), 2001 ND 71, 624 N.W.2d 686

Father's violence and mental health issues, and nutrition and hygiene problems related to children ages 16, 11 and 9 had not been resolved despite lengthy attempt to overcome parenting inabilities supported termination because the courts cannot allow the children to remain in an indeterminate status midway between foster care and the obvious need for permanent placement.

[Interest of D.R.](#), 525 N.W.2d 672 (N.D. 1994)

History of domestic abuse by father, and mother's limited intellectual functioning and failure to protect children (ages 5 & 6) created post-traumatic stress disorder in children. Trauma created need to prohibit parents from seeing children in foster care, and thus necessitated termination, rather than permanent foster care.

[Interest of J.H. AND A.H.](#), 484 N.W.2d 482 (N.D. 1992)

Testimony from psychiatrist and other experts showed that the children (ages 8 & 9) were harmed as a result of the mother's mental illness, and that the harm was likely to continue.

[Interest of D.R.](#), 463 N.W.2d 918 (N.D. 1990)

Both parents' mental illness and inability to parent; Mental illness alone does not justify the termination of parental rights. Termination depends upon the parent's ability, conduct, and fitness to function as responsible caregivers.

[Interest of M.M.S.](#), 449 N.W.2d 574 (N.D. 1989)

A child should be taken from a parent at birth only when it is clear that the child would probably suffer serious harm if left in the parent's care. Such a situation existed where mother's history of failure to cope with severe mental illness was the primary cause for the loss of custody of 3 other children.

[Adoption of K.S.H.](#), 442 N.W.2d 417 (N.D. 1989)

Father with mental illness repeatedly challenged child's placement with grandparents. Child (age 14) sought to be adopted by grandparents because he felt insecure about continued challenges by his father. Termination properly denied because no evidence that child's fears caused him harm.



[Interest of V.J.R.](#), 387 N.W.2d 499 (N.D. 1986)

Mother needing 2 years of psychological counseling voluntarily placed child (age 2) with social services. Although voluntarily placing a child with social services may be in the best interests of that child, it is not against public policy to terminate the parental rights in such a case if the welfare of the child will be endangered by not terminating the parental rights.

[Interest of J.E.H. & C.L.H., Jr.](#), 355 N.W.2d 828 (N.D. 1984)

Mother's mental and emotional problems hindered her ability to care for herself and her children (age 3 & 2 mo). Even though there was no clear evidence of deprivation or harm to newborn, the court was justified in terminating parental rights based on evidence of harm to sibling and prognostic testimony indicating that the mother would never be able to change her parenting abilities because of psychological problems.

[Interest of M.N.](#), 294 N.W.2d 635 (N.D. 1980)

Mental illness of both parents contributed to 9-year-old child's developmental delays, but termination is appropriate because placing the child in special education removed the conditions causing the deprivation, and mother had not been hospitalized for mental illness since child's birth. Lower court was ordered to review the issue of termination and adoptability in one year.

[Interest of K.P.](#), 267 N.W.2d 1 (N.D. 1978)

Mother with 4 children and tenuous relationship with husband was found to be incapable of coping with the demands of parenting 4 children. Evidence showed that deprivation was caused in part by mental illness of mother, and even though there was evidence that her prognosis was good since being placed on medication, prognostic testimony was not subject to cross-examination, and was not relied upon by the juvenile court. When deprivation petition to older children was dismissed, the juvenile court lost jurisdiction over them, and it was not proper to place them in foster care.

[Interest of R.D.S.](#), 259 N.W.2d 636 (N.D. 1977)

Mother's mental illness which required medication and hospitalization did not support termination of child (age 10) because of insufficient evidence to show if conditions of deprivation were likely to continue - relevant inquiry is not whether there is a "better" home for the child - CJ Erickstad's dissent centered on goal of Juvenile Court Act to serve the best interests of the child

[Interest of R.L.D.](#), 253 N.W.2d 870 (N.D., 1977)

Mother's mental illness accompanied by suicide attempts while child (age 9) was in the home - child's testimony properly excluded at hearing because harm to child outweighed probative value

[Interest of R.W.B.](#), 241 N.W.2d 546 (N.D. 1976)

Parents convicted of child abuse - right to counsel did not attach to statements made to social services - waiting 1 year to determine if parents could be rehabilitated was too long

### **Murder of Spouse/ Parent**

[Adoption of J.S.P.L.](#), 532 N.W.2d 653 (N.D. 1995)

Father incarcerated for killing children's mother in presence of the children (ages 12, 9 and 5) found to have abandoned them; father had no constitutional right to personally appear or cross-examine witnesses at termination hearing because he waived his right to counsel - his appearance would be traumatizing to the children.

[Matter of Norman](#), 521 N.W.2d 395 (N.D. 1994)

Father incarcerated for killing mother in the presence of the children. Children placed in home of maternal aunt. Father moved to remove the guardian based on abuse and neglect. Oral argument on the motion was properly denied.

### **Parental Alienation**

[Interest of T.T.](#), 2004 N.D. 138, 681 N.W.2d 779

Family's history with social services, police, and other professionals following divorce; parental alienation - child age 10 - juvenile court has jurisdiction over divorce-related custody proceedings, but may take judicial notice of orders from those proceedings - child found deprived but placed with mother

[Interest of C.H.](#), 2001 ND 37, 622 N.W.2d 720

Unruliness (run away from visitation with Dad) caused by alienation by Mom against Dad; children placed with Mom because they would suffer no further harm in her custody

### **Paternity**

[Interest of S.L.W.](#), 2010 ND 172, 788 N.W.2d 328

Presumed father disestablished paternity in 2004. Defendant appealed from 2010

judgment declaring him the biological father. He argued the district court erred in allowing the presumed father to initiate non-paternity action because it was barred by statute of limitations. The statute of limitations is an affirmative defense which is waived if not pleaded. No party raised the statute of limitations as a defense in the non-paternity proceedings. Therefore, the alleged father could not raise the defense in the subsequent paternity action.

[Interest of E.J.H. and T.S.H.](#), 546 N.W.2d 361 (N.D. 1996)

Sisters (ages 7 & 14) with different fathers - paternity established to one sister after petition to terminate parental rights was filed - maternal grandparents intervened, alleging right of sisters to live together; A natural parent has a constitutional right to the custody of his children, absent exceptional circumstances, which trigger a best interests analysis when custody with the natural parent is challenged.

[Novak v. J.L.D.](#), 539 N.W.2d 73 (N.D. 1995)

Parent's voluntary criminal act caused him to be incarcerated for a substantial amount of time, thereby preventing him from providing care and nurturing for his child. The child's need to be assimilated into a stable family outweighed father's request that the child remain in foster care until he was able to take custody.

### **Permanent Foster Placement**

[In the Interest of N.W.](#), 531 N.W.2d 303 (N.D. 1995) (earlier proceeding at [In the Interest of N.W.](#), 510 N.W.2d 580 (N.D. 1994))

Trial court's order of permanent placement in foster care, with unlimited visitation by mother, but no contact with father, was proper in light of sexual abuse by father.

[Interest of D.R.](#), 525 N.W.2d 672 (N.D. 1994)

History of domestic abuse by father, and mother's limited intellectual functioning and failure to protect children (ages 5 & 6) created post-traumatic stress disorder in children. Trauma created need to prohibit parents from seeing children in foster care, and thus necessitated termination, rather than permanent foster care.

### **Sexual Abuse of Children**

[Interest of D.R.](#), 2001 ND 183, 636 N.W.2d 412

Chronic drug abuse by mother, accompanied by a series of relationships with men who abused both mother and children (ages 12 & 10) indicated a pattern of

conduct showing deprivation was likely to continue and result in serious harm to child.

[Interest of F.N.D.](#), 554 N.W.2d 456 (N.D. 1996)

four-year-old girl abused by daycare provider's son; court properly ordered no contact with the daycare provider.

[Interest of C.M.](#), 532 N.W.2d 381 (N.D. 1995)

stepfather sexually abused 4-year old while mother was incarcerated; initial petition for deprivation dismissed due to 30-day delay to continue investigation; second petition filed the next day was not barred by res judicata.

[In the Interest of N.W.](#), 531 N.W.2d 303 (N.D. 1995) (earlier proceeding at [In the Interest of N.W.](#), 510 N.W.2d 580 (N.D. 1994))

Trial court's order of permanent placement in foster care, with unlimited visitation by mother, but no contact with father, was proper in light of sexual abuse by father.

### **Shaken Baby Syndrome**

[Interest of A.V.](#), 554 N.W.2d 461 (N.D. 1996)

Baby shaken - unclear who shook him; In a child deprivation proceeding, the petitioner must prove that a child's injury was caused either directly by, or through the actions of, a parent or parental substitute.

### **Special Needs Child**

[Interest of A.B., a Child](#), 2010 ND 249, 792 N.W.2d 539

The child witnessed the murder of his mother and suffered severe emotional and mental distress requiring intensive and ongoing intervention. Natural father's criminal history consisted of violent offenses and lack of commitment to avoid future incidents of violence and anger. Father failed to pay child support and did not see child for over 1 year until after mother's murder. Father showed no interest in participating in child's therapy or learning how to deal with child's ongoing special needs. The state was not required to exhaust every potential solution before seeking termination of parental rights.

[Interest of E.G.](#), 2006 ND 126, 716 N.W.2d 469

In cases of special-needs children, the juvenile court may take the special needs of the children into account when deciding whether the deprivation is likely to

continue. The parents of special-needs children are required to meet a measure of parenting that will allow the children to reasonably meet their potential. Leeway is limited because of the special needs of the children.

[Adoption of S.R.F.](#), 2004 N.D. 150, 683 N.W.2d 913

Mother voluntarily placed special needs child (age 3) with friends of family - child had numerous health and developmental issues - termination ordered for failing to exercise visitation or provide financial support

[Interest of T.K.](#), 2001 ND 127, 630 N.W.2d 38

Chaotic and violent relationship between parents, and repeated episodes of physical abuse; caused deprivation of special needs child (age 3) and infant brother. Constitutional right of parents to their children is not absolute; desire of mother to improve cannot outweigh mental and physical health concerns to the children

[Interest of W.E.](#), 2000 ND 208, 619 N.W.2d 494

Positive reports regarding mildly retarded mother's improving housekeeping and parenting skills and testimony of church members pledging their support and assistance in caring for the children weighed against termination.

[Heitkamp v. L.J.](#), 436 N.W.2d 558 (N.D. 1989)

Although the record showed that the mother's other burdens had decreased, prognostic evidence showed that she would not be able to meet the minimum community standards required to parent her mentally retarded sons (ages 16 & 20). The minimum community standards regarding a special needs child is care that will reasonably contribute to the limited potential of that child in order to avoid the drastic and permanent consequences of lesser efforts.

[Jacobson v. J.A.L.](#), 432 N.W.2d 876 (N.D. 1988)

Although a mentally retarded individual has the right to "appropriate treatment, services, and habilitation" for their disabilities, the evidence showed that the mother would never gain sufficient skills to provide adequate care for her special needs child (suffering from cerebral palsy) by herself. The state is not required to provide permanent and constant foster care for both the mother and child in order to preserve the parent/ child relationship

[Interest of J.K.S.](#), 356 N.W.2d 88 (N.D. 1984)

Unmarried minor mother had sporadic contact with child (age 6) who had special needs due to premature birth. Subsequent attempts to improve mother's

parenting skills were unsuccessful. . Emotional attachment of child to her foster family was also considered, as removing the child would cause severe emotional harm.

[Interest of M.N.](#), 294 N.W.2d 635 (N.D. 1980)

Mental illness of both parents contributed to 9-year-old child's developmental delays, but termination in appropriate because placing the child in special education removed the conditions causing the deprivation, and mother had not been hospitalized for mental illness since child's birth. Lower court was ordered to review the issue of termination and adoptability in one year.

### **Standard of Review**

[Interest of J.K.](#), 2009 ND 46, 763 N.W.2d 507

Prior to March 1, 2004, factual findings in juvenile matters were reviewed under a procedure similar to the former trial de novo, with substantial weight given to the trial court's findings because of its superior position to decide questions of demeanor and credibility. Effective March 1, 2004, N.D.R.Civ.P. 52(a) was amended to provide that findings of fact in juvenile matters shall not be set aside on appeal unless clearly erroneous. Since N.D.R.Civ.P. 52(a) was amended to exclude de novo review in juvenile cases, those cases applying the procedure similar to trial de novo for review of juvenile matters were superseded.

[Interest of D.Q.](#), 2002 ND 188, 653 N.W.2d 713

A district court's review of a judicial referee's findings and recommendations under ND Admin. R. 13, § 11(b), when it is a review of the record, is governed by N.D.R.Civ.P. 53, and the district court is obliged to accept the referee's findings unless they are clearly erroneous.

[Pritchett v. Exec Dir of Social Services Brd.](#), 325 N.W.2d 217 (N.D. 1982)

Termination of Parental Rights and step-parent adoption of child (age 5). The proper standard of review for termination of parental rights proceedings under the Uniform Juvenile Court Act or the Revised Uniform Adoption Act is similar to a trial de novo. The proper evidentiary standard for termination cases is "clear and convincing," and the burden remains with the individual challenging the natural parent's rights throughout the proceeding.

### **Step-Parent Adoption**

[Adoption of H.R.W.](#), 2004 ND 216, 689 N.W.2d 403

Natural father abandoned child (age 5) by failing to communicate with child or

pay child support

[Adoption of S.A.L.](#), 2002 ND 178, 652 N.W.2d 912

Incarcerated parent who had no contact with 9 year old child effectively waived right to counsel at termination hearing by inaction and waiting until 6 days before termination hearing to request assistance of counsel.

[Adoption of J.M.H.](#), 1997 ND 99, 564 N.W.2d 623

Incarcerated biological father abandoned child (age 8). The procedures for terminating the inmate's parental rights did not deprive him of due process and his conclusory allegations were insufficient to show ineffective assistance of counsel.

[Adoption of J.W.M.](#), 532 N.W.2d 372 (N.D. 1995)

Incarcerated father who had intermittent past conduct with child (age 6) and who was allowed to give testimony via recorded deposition at termination hearing did not have his constitutional rights violated by procedure used at trial. Dissent argued that termination was improper because child was not abandoned. Natural father's failure to pay child support warranted a court order, not termination.

[Adoption of A.M.M.](#), 529 N.W.2d 864 (N.D. 1995)

Father, who resided in California, abandoned his child (age 6) after mother moved from California to North Dakota was affirmed. Although relationship between father and child was close when child lived in California, attempts to contact the child were virtually eliminated when child resided in North Dakota.

[Adoption of A.M.B.](#), 514 N.W.2d 670 (N.D. 1994)

Natural mother's actions in frustrating father's attempted visitation of 2-year-old did not rebut the evidence that he had abandoned the child when the father paid no child support, only attempted to visit the child twice, and did not attempt to negotiate visitation when offered by the mother.

[Adoption of K.A.S.](#), 499 N.W.2d 558 (N.D. 1993)

Denial of court-appointed counsel to an indigent person whose parental rights are sought to be terminated is a violation of Equal Protection under the state constitution.

[Pritchett v. Exec Dir of Social Services Brd.](#), 325 N.W.2d 217 (N.D. 1982)

Termination of Parental Rights and step-parent adoption of child (age 5). The

proper standard of review for termination of parental rights proceedings under the Uniform Juvenile Court Act or the Revised Uniform Adoption Act is similar to a trial de novo. The proper evidentiary standard for termination cases is "clear and convincing," and the burden remains with the individual challenging the natural parent's rights throughout the proceeding.

[Mortenson v. Tangedahl](#), 317 N.W.2d 107 (N.D. 1982)

While it is important that a natural parent be given the opportunity to appear at a hearing on a petition for adoption, that right is not absolute, and courts are not required to grant a continuance as a matter of law. Contacts between defendant and the children were initiated by the children in order to play with their cousins, and was therefore insufficient to rebut finding of abandonment.

[Matter of Adoption of Gotvaslee](#), 312 N.W.2d 308 (N.D. 1981)

Father's claim that he did not intend to abandon his children (ages 5 & 6) coupled with evidence of some support payments and two visitations in five years was not sufficient to avoid a finding of abandonment.

### **Transfer from Juvenile Court to District Court**

[Interest of M.W.](#), 2010 ND 135, 785 N.W.2d 211

When a child attains the age of twenty years, all juvenile court orders affecting the child then in force terminate and the child is discharged from further obligation or control. When a child attains the age of twenty years, the juvenile court is without jurisdiction to issue an order transferring charges to the district court.

[Interest of M.W.](#), 2009 ND 55, 764 N.W.2d 185

Under N.D.C.C. § 27-20-34, a juvenile court automatically transfers a case involving gross sexual imposition or attempted gross sexual imposition only if the gross sexual imposition or attempted gross sexual imposition charge is by force or by threat of imminent death, serious bodily injury, or kidnapping.

[Interest of A. E.](#), 1997 ND 9, 559 N.W.2d 215

Under N.D.C.C. § 27-20-34(1)(c)(4)(b), the court must find there are reasonable grounds to believe that the juvenile is not amenable to treatment or rehabilitation as a juvenile in order to transfer a juvenile to district court for prosecution. Generally, the State bears the burden of persuasion that the juvenile is not amenable to treatment; however, N.D.C.C. § 27-20-34(2) shifts the burden of persuasion to the child to show there are reasonable grounds to believe the child



is amenable to treatment.

[Interest of J.K.M.](#), 557 N.W.2d 229 (N.D. 1996)

17-year-old's violent attack on ex-boyfriend's new girlfriend was considered by doctors who said it was a one-time incident and defendant was amenable to treatment for 3-5 years, so transfer to district court not appropriate

[In the Interest of C.R.M.](#), 552 N.W.2d 324 (N.D. 1996)

A probable cause finding upon a juvenile detention hearing is designed to afford a child treatment or rehabilitation. A probable cause finding in a transfer hearing has a very different purpose, and is an additional opportunity for a juvenile to show, with the assistance of counsel, that probable cause does not exist.

[Interest of J.A.G.](#), 552 N.W.2d 317 (N.D. 1996)

The juvenile court properly found reasonable grounds to believe the 16-year-old juvenile committed a delinquent act of conspiracy to commit armed robbery and was not amenable to treatment or rehabilitation as a juvenile through available programs.

[Odegard v. T.M.](#), 512 N.W.2d 441 (N.D. 1994)

17-year old's acts of terrorizing, assault, threatening public officials, and lengthy history of violence and commitments to state industrial school were sufficient to support transfer when it was shown that child committed the acts, was not amenable to treatment, and the interest of the community required placement under legal restraint or discipline. 36

[Interest of M.D.N.](#), 493 N.W.2d 680 (N.D. 1992)

A juvenile may be transferred to district court for prosecution when there is probable cause to believe the juvenile committed a serious act and is not amenable to treatment or rehabilitation in the state. (15-year-old accused of murdering parents and siblings)

[Interest of J.K.H.](#), 392 N.W.2d 406 (N.D. 1986)

Order to transfer prosecution of 17 year old gross sexual imposition defendant was affirmed because there were no in-state treatment options available, and funding of out-of-state treatment programs was unlikely

### **Voluntary Temporary Placement**

[Adoption of S.R.F.](#), 2004 N.D. 150, 683 N.W.2d 913

Mother voluntarily placed special needs child (age 3) with friends of family - child had numerous health and developmental issues - termination ordered for failing to exercise visitation or provide financial support

[Interest of D.F.G. and E.K.B.](#), 1999 ND 216, 602 N.W.2d 697

Although voluntary temporary placements of child with social services are to be commended, repeated placements and mother's history of alcohol abuse and failure to comply with recommended treatments supported termination of parental rights. 22

[Interest of R.M.B.](#), 402 N.W.2d 912 (N.D. 1987)

Although there was evidence that teen-aged mother voluntarily placed the child (age 6) with social services and remained in contact with social services and the child by telephoning and providing some monetary support while she attended vocational training out of state, other prognostic and testimonial evidence indicating that she was not committed to the parent-child relationship, including voluntary termination petition that was withdrawn at the hearing, supported the finding of abandonment and deprivation.

[Interest of V.J.R.](#), 387 N.W.2d 499 (N.D. 1986)

Mother needing 2 years of psychological counseling voluntarily placed child (age 2) with social services. Although voluntarily placing a child with social services may be in the best interests of that child, it is not against public policy to terminate the parental rights in such a case if the welfare of the child will be endangered by not terminating the parental rights.